

STATE OF MICHIGAN
COURT OF APPEALS

LORRAINE D. BURROWS,

Plaintiff-Appellant,

v

SCHUIL COFFEE COMPANY and GARRY
SCHUIL,

Defendants-Appellees.

UNPUBLISHED
November 4, 2003

No. 240681
Wayne Circuit Court
LC No. 01-110679-NZ

Before: Bandstra, P.J., and Hoekstra and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendants' motion for summary disposition. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed this action on March 29, 2001, seeking unpaid commissions on sales of defendants' product. The trial court ruled that the claim was barred by the statute of limitations because plaintiff learned of the breach in August 1994. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Whether a cause of action is barred by the statute of limitations is a question of law that is also reviewed de novo on appeal. *Ins Comm'r v Ageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997).

A breach of contract action must be brought within six years after the claim accrues. MCL 600.5807(8). This limitations period applies equally to legal and equitable claims. MCL 600.5815. A breach of contract claim accrues on the date of the breach, i.e., when the promisor fails to perform, not when the breach is discovered. *Michigan Millers Mut Ins Co v West Detroit Bldg Co, Inc*, 196 Mich App 367, 372, n 1; 494 NW2d 1 (1992). Any commissions earned and unpaid before March 29, 1995 are therefore barred. However, claims for commissions earned and unpaid after that date accrued on the date payment was due. *H J Tucker & Associates, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550, 562-563; 595 NW2d 176 (1999). Therefore, while plaintiff may have known that defendants did not intend to honor the contract in August 1994, the actual actionable breach did not occur and associated claims did not accrue until payments came due and were not paid. Thus, plaintiff's claim was timely as to commissions which were earned and unpaid on and after March 29, 1995. *Id.*

While defendants dispute the existence and nature of the commission contract, this Court's review is limited to issues actually decided by the trial court. *Lowman v Karp*, 190 Mich App 448, 454; 476 NW2d 428 (1991). Because the trial court never decided this issue, this Court declines to address it. *Schubiner v New England Ins Co*, 207 Mich App 330, 331; 523 NW2d 635 (1994).

We reverse.

/s/ Richard A. Bandstra

/s/ Stephen L. Borrello